

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2005 NOV 22 PM 1:25

IN THE MATTER OF:

1100 Umatilla, Denver, Colorado
Denver Radium Superfund Site

Atlas Metal & Iron Corp. and
Atlas Umatilla, LLC

Settling Respondents

) ADMINISTRATIVE ORDER ON
) CONSENT
)
) U.S. EPA Region 8
) EPA Docket No. CERCLA-08-2006-0001
)
) Proceeding Under Sections 104, 106(a), 107
) and 122 of the Comprehensive
) Environmental Response, Compensation,
) and Liability Act, as amended, 42 U.S.C. §§
) 9604, 9606(a), 9607 and 9622
)

FILED
EPA REGION VIII
HEARING CLERK

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I. JURISDICTION AND GENERAL PROVISIONS

- 1) This Administrative Order on Consent ("Order") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and the Atlas Metal & Iron Corp. and Atlas Umatilla, LLC ("Settling Respondents") (collectively the "Parties"). This Order provides for the performance of operation and maintenance activities by the Settling Respondents, the recording of an environmental covenant by Atlas Umatilla, LLC, the reimbursement of certain response costs incurred by the United States at or in connection with the property located at 1100 Umatilla, Denver, Colorado ("Property"), and waiver of certain liens by the United States.
- 2) This Order is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622, as amended ("CERCLA"), and under the authority of the Attorney General of the United States to compromise and settle claims of the United States.
- 3) EPA has notified the State of Colorado (the "State") of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).
- 4) EPA and Settling Respondents recognize that this Order has been negotiated in good faith and that the actions undertaken by Settling Respondents in accordance with this Order do not constitute an admission of any liability. Settling Respondents do not admit the validity of the findings of facts, conclusions of law, and determinations in Sections IV and V of this Order, and retain the right to controvert in any subsequent proceedings, other than proceedings to implement or enforce this Order, such findings of facts, conclusions of law, and determinations. Each

Settling Respondent agrees to comply with and be bound by the terms of this Order that apply to it and further agrees that it will not contest the basis or validity of this Order or its terms.

II. PARTIES BOUND

5) This Order shall apply to and be binding upon EPA and shall apply to and be binding upon the Settling Respondents, their successors and assigns, and their officers, directors, and employees. The Covenant Not to Sue By EPA in Section XX and Contribution Protection in Section XXIV shall apply to Settling Respondents' officers, directors, or employees, to the extent that the alleged liability of the officer, director, or employee is based on its status and in its capacity as an officer, director, or employee of Settling Respondents, and not to the extent that the alleged liability arose independently of the alleged liability of the Settling Respondents. Any change in ownership or corporate status of a Settling Respondent including, but not limited to, any transfer of assets or real or personal property, shall not alter such Settling Respondent's responsibilities and rights under this Order. Each signatory of a Party to this Order represents that he or she is fully authorized to enter into the terms and conditions of this Order and to legally bind such Party.

6) Settling Respondents shall ensure that their contractors, subcontractors, and representatives receive a copy of this Order and comply with this Order. Each Settling Respondent shall be responsible for any noncompliance with the terms of this Order that apply to it.

III. DEFINITIONS

7) Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Order or

in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

- a) "Bona Fide Prospective Purchaser" or "BFPP" shall mean a person as identified in Section 101(40) of CERCLA, 42 U.S.C. § 9601(40).
- b) "CDPHE" shall mean the Colorado Department of Public Health and Environment and any successor departments or agencies of the State.
- c) "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, et seq.
- d) "Day" shall mean a calendar day. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.
- e) "Effective Date" shall be the effective date of this Order as provided in Section XXVII.
- f) "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.
- g) "Environmental Covenant" shall mean the environmental covenant Settling Respondents and the State have agreed upon, a copy which is attached as Appendix C.
- h) "Existing Contamination" shall mean:
 - i) any hazardous substance or pollutant or contaminant present or existing on or under the Property as of the effective date of this Order;
 - ii) any hazardous substance or pollutant or contaminant that migrated from the Property prior to the effective date of this Order; and

- iii) any hazardous substance or pollutant or contaminant present or existing at the Site that migrates onto or under or from the Property after the effective date of this Order .
- i) "Interest" shall mean interest at the current rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).
- j) "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.
- k) "Order" shall mean this Administrative Order on Consent and all appendices attached hereto (listed in Section XXIX). In the event of conflict between this Order and any appendix, this Order shall control.
- l) "Paragraph" shall mean a portion of this Order identified by an Arabic numeral.
- m) "Parties" shall mean the United States on behalf of EPA, and the Settling Respondents.
- n) "Property" shall mean that portion of the Site, encompassing approximately 10.5 acres at 1100 Umatilla Street, Denver Colorado, which is described in Appendix A of this Order.
- o) "Record of Decision" or "ROD" shall mean the EPA Record of Decision and Explanation of Significant Differences relating to the Site signed on 9/29/1987, and 9/17/1993, respectively by the Regional Administrator, EPA Region 8, or his/her delegatee, and all attachments thereto.
- p) "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, et seq. (also known as the Resource Conservation and Recovery Act).

- q) "Section" shall mean a portion of this Order identified by a Roman numeral.
- r) "Settling Respondent(s)" shall mean Atlas Metal and Iron Corp. ("Atlas Metal") and Atlas Umatilla, LLC ("Atlas Umatilla").
- s) "Site" shall mean the Denver Radium Superfund Site, Operable Unit II, and depicted generally on the map attached as Appendix B. The Site shall include the Property, and all areas to which hazardous substances and/or pollutants or contaminants, have come to be located.
- t) "State" shall mean the State of Colorado.
- u) "Waste Material" shall mean 1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); 2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); 3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and 4) any "hazardous material" under State law.
- v) "Work" shall mean all activities Settling Respondents are required to perform under this Order.
- w) "United States" shall mean the United States of America, its departments, agencies, and instrumentalities.

IV. FINDINGS OF FACTS

- 8) EPA makes the following findings of fact based upon information provided by Settling Respondents and the Administrative Record regarding the Site.
 - a) The Property lies approximately 500 feet east of the South Platte River and 2000 feet south of West Colfax Avenue within a light industrial area of the City and County of Denver.

- b) From 1914 to 1917, the Schlesinger Radium Company processed carnotite ores on or near the Property. In 1917, the Schlesinger Radium Company was merged into the Radium Company of Colorado. The Radium Company of Colorado continued radium separation operations until 1924. Records indicate that 1,000-1,200 tons of carnotite ore per year were processed from 1916 to 1921, and a total of 30.88 grams of radium were produced over this time period. The radium extraction processes used in this era were relatively inefficient and only 50 to 90 percent of the radium in the ore was extracted. As a result, the wastes from these processes, which were disposed on-site, were radioactive.
- c) Du-Wald Investment Company, Inc. began metal recycling at the Property in 1953. In the late 1950's and early 1960's, an operation to reclaim lead from auto batteries was conducted on the Property. This operation resulted in lead contamination on a portion of the Property. Upon dissolution of Du-Wald Investment Company, Inc. in 1975, Duman Properties, Inc. a/k/a Du-Wald Steel Corporation (Du-Wald) took over the metal recycling operations.
- d) The Property was listed on the NPL as part of the Denver Radium Superfund Site, Operable Unit II, on September 8, 1983. On September 29, 1987, EPA issued a Record of Decision ("ROD") for Operable Unit II. The ROD called for excavation and off-site disposal of the radium-contaminated soils. During implementation of the ROD, EPA determined that some radium-contaminated soils could be left in place pursuant to supplemental standards and also discovered the lead contaminated soils. It was determined that excavation, treatment, and off-site disposal were the best response

actions for the lead contaminated soils. These changes to the ROD were documented in an Explanation of Significant Differences (ESD) dated September 17, 1993.

- e) Du-Wald and EPA completed most of the work implementing the ROD and ESD at the Site in 1993. Operation and maintenance activities still need to be performed at the Property, including implementation of institutional controls, to limit or control disturbance of any contaminated soils left on-Site under supplemental standards, to restrict use of ground water, and to monitor and maintain acceptable radon levels in buildings on the Property.
- f) Settling Respondent Atlas Umatilla acquired the Property in 2005. Settling Respondent Atlas Metal leased, and has used and occupied the Property for office space and to conduct scrap metal recycling, since 2004.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

- 9) Based on the Findings of Fact set forth above, and the Administrative Record supporting these operation and maintenance activities, EPA has determined that:
 - a) The Property is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
 - b) The contamination found at the Property, as identified in the Findings of Fact above, includes "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
 - c) Each Settling Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

- d) Atlas Umatilla is the current owner of Property. Atlas Metal is the prior lessee and current operator at the Property. At the time Atlas Umatilla and Atlas Metal acquired an ownership or other possessory interest in the Property they were both BFPPS.
- e) Absent the implementation of the operation and maintenance activities set out in this Order, there may be a threatened release of hazardous substances at the Site which may present an imminent and substantial endangerment to human health and the environment.
- f) The operation and maintenance activities required by this Order are necessary to protect the public health or welfare or the environment and, if carried out in compliance with the terms of this Order, will be considered consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.
- g) Settling Respondents' performance of the operation and maintenance activities required by this Order shall constitute "appropriate care" by the taking of "reasonable steps," as set forth in Section 101(40)(D) of CERCLA, 42 U.S.C. § 9601(40)(D), with regard to Existing Contamination at the Site.

VI. ORDER

- 10) Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, it is hereby Ordered and Agreed that Settling Respondents shall comply with all of the provisions of this Order including, but not limited to, all attachments to this Order and all documents incorporated by reference into this Order.

VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND REMEDIAL PROJECT MANAGER

- 11) Settling Respondents shall notify EPA of the name(s) and qualification(s) of any contractor(s) or subcontractor(s) retained to perform the Work at least 5 days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Settling Respondents. If EPA disapproves of a selected contractor, Settling Respondents shall retain a different contractor and shall notify EPA of that contractor's name and qualifications within 10 days of EPA's disapproval.
- 12) Within 5 days after the Effective Date, Settling Respondents shall designate a Project Coordinator who shall be responsible for administration of all actions by Settling Respondents required by this Order and shall submit to EPA the designated Project Coordinator's name, address, telephone number, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves the designated Project Coordinator, Settling Respondents shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within 10 days following EPA's disapproval. Receipt by Settling Respondents' Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by Settling Respondents.
- 13) EPA has designated Rebecca Thomas of the Superfund Remedial Branch, Region 8, as its Remedial Project Manager ("RPM"). Except as otherwise provided in this Order, Settling Respondents shall direct all submissions required by this Order to the current or future RPM at

Mail Code: EPR-SR, U.S. Environmental Protection Agency, 999 18th Street, Suite 300, Denver, CO 80202.

14) EPA and Settling Respondents shall have the right, subject to Paragraph 11, to change their respective designated RPM or Project Coordinator. If feasible, Settling Respondents shall notify EPA 5 days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notice.

VIII. WORK TO BE PERFORMED

15) Operation and Maintenance Activities. Settling Respondents agree to implement the operation and maintenance activities required for the Property as set out in the ROD. The operation and maintenance activities required for the Property are as follows:

- a) preserve and maintain the existing concrete cap at the Property;
- b) restrict disturbance of radium-contaminated soils at the Property;
- c) restrict the use of ground water at the Property; and
- d) monitor and maintain indoor air quality, including compliance with 40 CFR § 192.12(b), to be protective of human health from radium exposures.

16) Environmental Covenant.

- a) Settling Respondents shall incorporate these response actions into an Environmental Covenant approved by EPA and accepted by the State. The Environmental Covenant, applicable to and to be recorded for the Property, is attached in Appendix C of this Order.
- b) Within 15 days of the effective date of this Order, Settling Respondents shall provide EPA a current title insurance commitment or some other evidence of title acceptable to EPA, which shows title to the land described in the Environmental Covenant to be free

and clear of all prior liens and encumbrances (except when those liens or encumbrances are approved by EPA or when, despite best efforts, Settling Respondents are unable to obtain release or subordination of such prior liens or encumbrances). Within 30 days of the effective date of this Order, Atlas Umatilla shall record the Environmental Covenant. Within thirty (30) days of recording the Environmental Covenant, Atlas Umatilla shall provide EPA with a copy of a final title insurance policy and an updated title commitment, or other final evidence of title acceptable to EPA, and a copy of the original recorded Environmental Covenant showing the clerk's recording stamps.

17) Health and Safety Plan and Quality Assurance and Sampling.

EPA and the State have approved the Materials Management and Health and Safety Plan attached in Appendix D. All sampling and analyses performed pursuant to this Order shall conform to the requirements set out in the approved Materials Management and Health and Safety Plan on file with the State.

18) Reporting. Settling Respondents shall annually submit a written report to EPA and the State describing any modifications made to the Environmental Covenant pursuant to Section 25-15-321 C.R.S., actions performed pursuant to the Environmental Covenant and any problems encountered, analytical data received during the reporting period which relates to this Order, the developments anticipated during the next reporting period, and any other significant developments regarding the Environmental Covenant. This report for the preceding calendar year is due by the end of March of each calendar year. The reporting period and contents of the report may be modified upon agreement of the Parties.

19) Notice.

- a) Settling Respondents shall, at least 30 days prior to the conveyance of any interest in real property at the Site, give written notice to the transferee that the property is subject to this Order and written notice to EPA and the State of the proposed conveyance, including the name and address of the transferee. All of the rights, benefits and obligations conferred upon Settling Respondents under this Order may be assigned or transferred to any person upon the terms and with the prior written consent of EPA, made in its sole discretion.
- b) While an Owner or Operator of the Property, the Settling Respondents shall ensure that assignees, successors in interest, lessees, sublessees of the Property, licensees, and those granted a right to use the Property shall provide the same access, implementation of remaining response actions and activities required in the Environmental Covenant, and cooperation, including assuring compliance with Paragraph 18, Section IX (Site Access) and Section X (Access to Information). The Settling Respondents shall ensure that a copy of this Order is provided to any current lessee or sublessee on the Property as of the effective date of this Order and, while Owner or Operator of the Property, shall ensure that any subsequent leases, subleases, assignments or transfers of the Property or an interest in the Property are consistent with this Section and the terms of the Environmental Covenant.

20) Off-Site Shipments.

- a) Settling Respondents shall, prior to any off-Site shipment from the Property of radium contaminated soils to an out-of-state waste management facility, provide written notification of such shipment to the appropriate state environmental official in the

receiving facility's state and to the RPM. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

- b) Settling Respondents shall include in the written notification the following information:
 - 1) the name and location of the facility to which the material is to be shipped; 2) the type and quantity of the material to be shipped; 3) the expected schedule for the shipment of the material; and 4) the method of transportation. Settling Respondents shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the material to another facility within the same state, or to a facility in another state.
- c) The identity of the receiving facility and state will be determined by Settling Respondents following the award of the contract for the removal action. Settling Respondents shall provide the information required by Paragraph 20(a) and 20(b) as soon as practicable after the award of the contract and before the material is actually shipped.
- d) Before shipping any hazardous substances or pollutants or contaminants identified by Paragraph 20(a) from the Property to an off-site location, Settling Respondents shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Settling Respondents shall only send hazardous substances, or, pollutants or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

IX. ACCESS

21) Settling Respondents agree to provide to EPA and the State, their authorized officers, employees, representatives, and all other persons performing response actions under EPA or State oversight, an irrevocable right of access at all reasonable times to the Property and to any other property to which access is required for the implementation of response actions at the Site, to the extent access to such other property is controlled by the Settling Respondents, when such access is required for the purposes of performing and overseeing response actions at the Site under federal and State law. EPA or the State agrees to provide reasonable notice to the Settling Respondents of the timing of access or response actions to be undertaken at the Property. Notwithstanding any provision of this Order, EPA and the State retain all of their access authorities and rights, including enforcement authorities related thereto, under CERCLA, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq., ("RCRA") and any other applicable statute or regulation, including any amendments thereto.

X. ACCESS TO INFORMATION

22) Settling Respondents shall provide to EPA and the State, upon written request, copies of all documents and information within their possession or control or that of their contractors or agents relating to implementation of this Order, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Settling Respondents shall also make available to EPA and the State, for purposes of investigation, information

gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

23) Settling Respondents may assert business confidentiality claims covering part or all of the documents or information submitted to EPA and the State under this Order to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA and the State, or if EPA has notified Settling Respondents that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Settling Respondents.

24) Settling Respondents may assert certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Respondents assert such a privilege in lieu of providing documents, they shall provide EPA and the State with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record, or information; and 6) the privilege asserted by Settling Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of this Order shall be withheld on the grounds that they are privileged.

25) No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site, as provided for in Section 104(e)(7)(F) of CERCLA, 42 U.S.C. § 9604(e)(7)(F).

XI. RECORD RETENTION

26) The Settling Respondents agree to retain and make available to EPA and the State all documents relating to the subject matter of this Order for at least ten years, following the effective date of this Order unless otherwise agreed to in writing by the Parties. Settling Respondents shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the subject matter of this Order. At the end of ten years, the Settling Respondents shall notify EPA and the State of the location of such documents and shall provide EPA and the State with an opportunity to copy any documents at the expense of EPA or the State. Settling Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Respondents assert such a privilege, they shall provide EPA or the State with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted by Settling Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of this Order shall be withheld on the grounds that they are privileged.

27) Each Settling Respondent hereby certifies individually that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any material records, documents or other information (other than identical copies) relating to their potential liability regarding the Site since negotiations commenced with EPA and that it has fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XII. COMPLIANCE WITH OTHER LAWS

28) Settling Respondents shall exercise due and appropriate care at the Site with respect to the Existing Contamination and shall perform all actions required to be performed by it pursuant to this Order in accordance with all applicable local, state, and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Order shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state environmental or facility siting laws. ARARs are identified in the Record of Decision.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

29) In the event the Settling Respondents become aware of any action or occurrence which causes or threatens a release of a hazardous substance or pollutant or contaminant at or from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Respondents shall immediately take all appropriate action

to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. §9603, or any other federal or state law, immediately notify EPA and the State of such release or threatened release.

XIV. AUTHORITY OF REMEDIAL PROJECT MANAGER

30) The RPM shall be responsible for overseeing Settling Respondents' implementation of this Order. The RPM shall have the authority vested in an RPM by the NCP, including the authority to halt, conduct, or direct any Work required by this Order, or to direct any other response action undertaken at the Site. Absence of the RPM from the Site shall not be cause for stoppage of work unless specifically directed by the RPM.

XV. PAYMENT TO EPA

31) In consideration of and in exchange for the Covenant Not to Sue By EPA in Section XX and Waiver of Liens in Section XXX, Settling Respondents agree to pay EPA \$58,000.00, allocated as \$18,000.00 in future costs and \$40,000.00 in past costs, in two installments due and payable as follows:

- a) \$29,000.00 due and payable no later than thirty (30) days from the Effective Date of this Order; and
- b) \$29,000.00, plus accrued interest, calculated from the effective date of this Order, due and payable on the first anniversary of the Effective Date of this Order.

32) Interest shall not accrue on the first installment payment so long as it is received by the due date. If the first payment is not received within thirty (30) Days of the effective date of this Order, interest on the unpaid balance shall accrue from the effective date of this Order through

the date of payment. For the second installment payment, interest shall accrue from the effective date of this Order through the date of payment. In the event payments required under Paragraphs 31.a. and 31.b. above are not received when due, all amounts owing plus accrued interest will become due and owing immediately.

33) The Settling Respondents shall make all payments to EPA required by this Order in the form of a certified check or checks made payable to "EPA Hazardous Substance Superfund," referencing the EPA Region, EPA Docket number, and Site/Spill ID# 08-01, DOJ case number 90-11-3-1631/1 and name and address of Settling Respondents. Settling Respondents shall send the check(s) to:

Regular Mail:

Mellon Bank
Attn: Superfund Accounting
Lockbox 360859
Pittsburgh, PA 15251-6859

Federal Express, Airborne, etc.:

Environmental Protection Agency 360859
Mellon Client Service Center Rm 670
500 Ross Street
Pittsburgh, PA 15262-0001

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

ABA = 021030004
TREAS NYC/CTR/
BNF=/AC-68011008

Payments must be received by 11:00 a.m. EST for same day credit. Notice of payment shall be sent to those persons listed in Section XXVI (Notices and Submissions) and to the EPA Region 8 Financial Management Officer at the following address:

Denver Radium Superfund Site
Mail Code: 8TMS-F
U.S. Environmental Protection Agency
999 18th Street, Suite 300 Denver, CO 80202

34) All funds to be paid by Settling Respondents to EPA pursuant to this Order shall be deposited in the Denver Radium OU 2 Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Denver Radium OU2 Superfund site or transferred by EPA to the Hazardous Substances Superfund.

XVI. PAYMENT TO THE STATE

35) EPA shall transfer to the State of Colorado \$4,000.00 from the amount to be paid by Settling Respondents pursuant Paragraphs 31(a) and 31(b) no later than 30 days from the date of receipt of funds by EPA required under Paragraphs 31(a) and 31(b) above. Said payments will be issued to the State of Colorado, "Colorado Hazardous Substances Response Fund" in two separate installments of \$2,000.00 and will be mailed to the following address:

Colorado Department of Public Health and Environment
Hazardous Materials and Waste Management Division
Remedial Programs Section
4300 Cherry Creek Drive South
Denver, CO 80222-1530
Ref: Denver Radium Superfund Site, Operable Unit 2

XVII. DISPUTE RESOLUTION

36) Unless otherwise expressly provided for in this Order, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Order.

The Parties shall attempt to resolve any disagreements concerning this Order expeditiously and informally.

37) If Settling Respondents object to any EPA action taken pursuant to this Order, they shall notify EPA in writing of their objection(s) within ten (10) days of such action, unless the objection(s) has/have been resolved informally. EPA and Settling Respondents shall have fifteen (15) days from EPA's receipt of Settling Respondents' written objection(s) to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA.

38) Any agreement reached by the parties to the dispute pursuant to this Section shall be in writing and shall, upon signature by each of the parties to the dispute, be incorporated into and become an enforceable part of this Order. If the Parties are unable to reach an agreement within the Negotiation Period, an EPA management official at the office director level or higher will issue a written decision on the dispute to Settling Respondents. The management official shall endeavor in good faith to provide a written decision within fourteen (14) days of the end of the Negotiation Period. EPA's decision shall be incorporated into and become an enforceable part of this Order. Settling Respondents' obligations under this Order shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Settling Respondents shall fulfill the requirement that was the subject

of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs first.

XVIII. FORCE MAJEURE

39) Each Settling Respondent agrees to perform all requirements of this Order that apply to it within the time limits established under this Order, unless the performance is delayed by a force majeure. For purposes of this Order, a force majeure is defined as any event arising from causes beyond the control of Settling Respondents, or of any entity controlled by Settling Respondents, including but not limited to their contractors and subcontractors, which delays or prevents performance of any obligation under this Order despite Settling Respondents' best efforts to fulfill the obligation. Force majeure does not include financial inability to complete the Work, or increased cost of performance.

40) If any event occurs or has occurred that may delay the performance of any obligation under this Order, whether or not caused by a force majeure event, the Settling Respondents shall notify EPA orally within 48 hours of when the Settling Respondents first knew that the event might cause a delay. Within three (3) days thereafter, the Settling Respondents shall provide to EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; that Settling Respondents' rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Settling Respondents, such event may cause or contribute to an endangerment to public health or welfare or the environment. Failure to comply with the above requirements shall preclude the Settling

Respondents from asserting any claim of force majeure for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

41) If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Order that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify that Settling Respondent in writing of its decision. If EPA agrees that the delay is attributable to a force majeure event, EPA will notify all Settling Respondents in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

XIX. STIPULATED PENALTIES

42) Settling Respondents shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 43 and 44 for failure to comply with the requirements of this Order specified below, unless excused under Section XVIII (Force Majeure). "Compliance" by Settling Respondents shall include completion of the activities under this Order, or any plan approved under this Order identified below in accordance with all applicable requirements of law, this Order, and any plans or other documents approved by EPA pursuant to this Order and within the specified time schedules established by and approved under this Order.

43) Stipulated Penalty Amounts - Payments.

- a) The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 43(b):

Penalty Per Violation Per Day	Period of Noncompliance
\$50	1st through 14th day
\$100	15th through 30th day
\$125	31st day and beyond

- b) Compliance Milestones

Payment of Costs within timeframe established in Paragraph 31 of this Order.

44) Stipulated Penalty Amounts - Reports. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports pursuant to Paragraphs 18:

Penalty Per Violation Per Day	Period of Noncompliance
\$50	1st through 14th day
\$100	15th through 30th day
\$125	31st day and beyond

45) All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: 1) with respect to a deficient submission under Section VIII (Work to be Performed), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Settling Respondents of any deficiency; and 2) with respect to a decision by the EPA Management Official at the office director level or higher, under Paragraph 38 of Section

XVII (Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA management official issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Order.

46) Following EPA's determination that Settling Respondents have failed to comply with a requirement of this Order, EPA may give Settling Respondents written notification of the failure and describe the noncompliance. EPA may send Settling Respondents a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Settling Respondents of a violation.

47) All penalties accruing under this Section shall be due and payable to EPA within 30 days of Settling Respondents' receipt from EPA of a demand for payment of the penalties, unless Settling Respondents invoke the dispute resolution procedures under Section XVII (Dispute Resolution). All payments to EPA under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall indicate that the payment is for stipulated penalties, and shall reference EPA Region 8, Site/Spill ID Number 08-01, the EPA Docket Number CERCLA-08-2006-0001, and the name and address of the party(ies) making payment. Payments under this Section shall be mailed to:

Via Regular mail:

Mellon Bank
EPA Region VIII
Attn: Superfund Accounting
Post Office Box 360859
Pittsburgh, Pennsylvania 15251-6859

Via Express or
Overnight Mail:

Environmental Protection Agency 360859
Mellon Client Services Center, Room 670
500 Ross Street
Pittsburgh, Pennsylvania 15262-0001

Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to EPA as provided in Paragraph 33.

48) The payment of penalties shall not alter in any way Settling Respondents' obligation to complete performance of the Work required under this Order.

49) Penalties shall continue to accrue during any dispute resolution period, but need not be paid until 15 days after the dispute is resolved by agreement or by receipt of EPA's decision.

50) If Settling Respondents fail to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Settling Respondents shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 46. Nothing in this Order shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Settling Respondents' violation of this Order or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(l) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA shall not seek civil penalties pursuant to Section 106(b) or 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Order. Notwithstanding any other provision of this Section, EPA

may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Order.

XX. COVENANT NOT TO SUE BY EPA

51) In consideration of the actions that will be performed and the payments that will be made by Settling Respondents under the terms of this Order, and except as otherwise specifically provided in this Order, EPA covenants not to sue or to take administrative action against Settling Respondents for any and all civil liability for:

- a) injunctive relief or reimbursement of response costs pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606 or 9607(a) with respect to Existing Contamination, and
- b) injunctive relief or reimbursement of response costs pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606 or 9607(a) for performance of the Work

52) This covenant not to sue shall take effect upon receipt by EPA of the Payments due under Section XV of this Order and any Interest or Stipulated Penalties due for failure to make the payments as required by Sections XV and XIX of this Order. This covenant not to sue is conditioned upon the complete and satisfactory performance by Settling Respondents of their obligations under this Order. This covenant not to sue extends only to Settling Respondents and does not extend to any other person.

XXI. RESERVATIONS OF RIGHTS BY EPA

53) Except as specifically provided in this Order, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health or welfare or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances or pollutants or contaminants, or hazardous or solid

waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Settling Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

54) The covenant not to sue set forth in Section XX above does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Order is without prejudice to, all rights against Settling Respondents with respect to all other matters, including, but not limited to:

- a) claims based on a failure by Settling Respondents to meet a requirement of this Order;
- b) liability for past or future releases caused or contributed to by Settling Respondents;
- c) liability resulting from exacerbation of Existing Contamination by Settling Respondents, their successors, contractors, assignees, lessees or sublessees;
- d) liability resulting from the release or threat of release of hazardous substances or pollutants or contaminants, at the Site after the effective date of the Order, not within the definition of Existing Contamination;
- e) criminal liability;
- f) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- g) liability arising from the past, present, or future disposal, release or threat of release of Waste Materials by Settling Respondents outside of the Site;
- h) liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site; and
- i) liability for violations of local, State or federal law or regulations.

XXII. SETTLING RESPONDENTS' COVENANT NOT TO SUE

55) In consideration of the Covenant Not To Sue By EPA in Section XX of this Order, the Settling Respondents hereby covenant not to sue and not to assert any claims or causes of action against the United States, their authorized officers, employees, or representatives with respect to the Site or this Order, including but not limited to, any direct or indirect claims for reimbursement from the Hazardous Substance Superfund established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507, through CERCLA Sections 106(b)(2), 111, 112, 113, or any other provision of federal or state law, any claim against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site, or any claims arising out of response activities at the Site, including claims based on EPA's oversight of such activities or approval of plans for such activities.

56) The Settling Respondents reserve, and this Order is without prejudice to, actions against the United States based on negligent actions taken directly by the United States, not including oversight or approval of the Settling Respondents' plans or activities, that are brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA. Nothing herein shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XXII. OTHER CLAIMS

57) By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Settling Respondents. The United States or EPA shall not be deemed a party to any contract entered into by Settling

Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

58) Except as expressly provided in Section XX (Covenant Not to Sue by EPA) and Section XXIV (Contribution Protection), nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against Settling Respondents or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

59) No action or decision by EPA pursuant to this Order shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXIV. CONTRIBUTION PROTECTION

60) With regard to claims for contribution against Settling Respondents, the Parties hereto agree that the Settling Respondents are entitled to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) for matters addressed in this Order. The matters addressed in this Order are all response actions taken or to be taken and response costs incurred or to be incurred at the Site by the United States or any other person with respect to the Existing Contamination.

61) The Settling Respondents agree that with respect to any suit or claim for contribution brought by them for matters related to this Order they will notify the United States and the State in writing no later than 60 days prior to the initiation of such suit or claim.

62) The Settling Respondents also agree that with respect to any suit or claim for contribution brought against them for matters related to this Order they will notify in writing the United States and the State within 10 days of service of the complaint on them.

XXV. INDEMNIFICATION

63) Settling Respondents shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Settling Respondents, their officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Order. In addition, Settling Respondents agree to pay the United States all costs incurred by the United States, including but not limited to attorneys fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Settling Respondents, their officers, directors, employees, agents, contractors, subcontractors and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Order. The United States shall not be held out as a party to any contract entered into by or on behalf of Settling Respondents in carrying out activities pursuant to this Order. Neither Settling Respondents nor any such contractor shall be considered an agent of the United States.

64) The United States shall give Settling Respondents notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Settling Respondents prior to settling such claim.

65) Settling Respondents waive all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising

from or on account of any contract, agreement, or arrangement between any one or more of Settling Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Settling Respondents shall each indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Settling Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXVI. NOTICES AND SUBMISSIONS

66) Whenever, under the terms of this Order, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Order with respect to the United States, EPA, State, and Settling Respondents, respectively.

As to the United States:

Chief, Environmental Enforcement Section
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044-7611

As to EPA:

Site Attorney
Denver Radium Superfund Site
Mail Code: 8ENF-L
U.S. Environmental Protection Agency,
Region 8
999 18th Street, Suite 300
Denver, Colorado 80202

Remedial Project Manager
Denver Radium Superfund Site
Mail Code: 8EPR-SA
U.S. Environmental Protection Agency,
Region 8
999 18th Street, Suite 300
Denver, Colorado 80202

As to State:

State Project Officer
Denver Radium Superfund Site
Colorado Department of Public Health and Environment
4300 Cherry Creek Dr. S.
Denver, Colorado 80246-1530

Colorado Department of Law
Natural Resources and Environment Section
1525 Sherman Street, Fifth Floor
Denver, CO 80203
Attention: Assistant Attorney General: Hazardous and Solid Waste Unit,
Denver Radium Superfund Site.

As to Settling Respondents:

Atlas Metal & Iron Corp.
and
Atlas Umatilla, LLC
P.O. Box 5428
Denver, Colorado 80217

With copy to:
J. Kemper Will
Burns, Figa & Will, P.C.
6400 S. Fiddlers Green Circle
Englewood, Colorado 80111

XXVII. EFFECTIVE DATE

67) The effective date of this Order shall be the date upon which EPA issues written notice to the Settling Respondent that EPA has fully executed the Agreement after review of and response to any public comments received

XXVIII. TERMINATION

68) If any Party believes that any or all of the obligations under Section VIII (Work to be Performed) are no longer necessary to ensure compliance with the requirements of the Order, that Party may request in writing that the other Party agree to terminate the provision(s) establishing such obligations; provided, however, that the provision(s) in question shall continue in force unless and until the party requesting such termination receives written agreement from the other party to terminate such provision(s).

XXIX. SEVERABILITY/INTEGRATION/APPENDICES

69) If a court issues an order that invalidates any provision of this Order or finds that Settling Respondents have sufficient cause not to comply with one or more provisions of this Order, Settling Respondents shall remain bound to comply with all provisions of this Order that apply to it that have not been invalidated or determined to be subject to a sufficient cause defense by the court's order.

70) This Order and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Order. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Order. The following appendices are attached to and incorporated into this Order:

Appendix A The description of the Property that is the subject of this Order.

Appendix B The map depicting the Site.

Appendix C The Environmental Covenant.

Appendix D Management and Health and Safety Plan

XXX. WAIVER OF LIENS

71) Subject to the Reservation of Rights in Section XXI of this Order, upon payment of the amount specified in Section XVI (Payment), EPA agrees to waive any lien(s) it may have on the Property under Sections 107(l) and 107(r) of CERCLA, 42 U.S.C. §§ 9607(l) and 9607(r), as a result of response actions conducted by EPA at the Property.

XXXI. PUBLIC COMMENT

72) This Consent Order shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, 42 U.S.C. § 9622(i)(3), EPA may withdraw or withhold its consent to this Consent Order if comments received disclose facts or considerations which indicate that this Consent Order is inappropriate, improper, or inadequate.

XXXII. MODIFICATIONS

73) The RPM may make modifications to any plan or schedule in writing or by oral direction, provided such modifications do not materially change the scope of Work. Where emergency circumstances exist, the RPM may make any modifications necessary to protect public health or the environment. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the RPM's oral direction. Any other requirements of this Order may be modified in writing by mutual agreement of the parties.

74) No informal advice, guidance, suggestion, or comment by the RPM or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Settling Respondents shall relieve Settling Respondents of their obligation to obtain any

formal approval required by this Order, or to comply with all requirements of this Order, unless it is formally modified.

THE SIGNATURES MAY BE EXECUTED IN COUNTERPARTS

Agreed This 25 Day Of August 2005.

Atlas Metal & Iron Corp.

By:

[Signature] 8-25-05
(Name) Date

Atlas Umatilla, LLC

By:

[Signature] 8-25-05
(Name) Date

It Is So Ordered And Agreed This 29th Day Of August, 2005.

BY: Dale Vodehnal

DATE: 08/25/05

Dale Vodehnal, Director
Superfund Remedial Response Program
Office of Ecosystems Protection and Remediation
Region 8
U.S. Environmental Protection Agency

BY: Michael T. Risner

DATE: 8/29/05

Michael Risner, Director
Legal Enforcement Program
Region 8
U.S. Environmental Protection Agency

BY: Sharon L. Kercher

DATE: 08/25/05

Sharon Kercher, Director
Technical Enforcement Program
Region 8
U.S. Environmental Protection Agency

In the Matter of 1100 Umatilla, Denver, Colorado

Denver Radium Superfund Site
APPROVED AND AGREED TO BY:

Kelly A. Johnson

DATE: 9/27/05

KELLY A. JOHNSON

Acting Assistant Attorney General

Environment and Natural Resources Division

U.S. Department of Justice

950 Pennsylvania Ave., N.W.

Washington, D.C. 20530

APPENDIX A

Exhibit A - Legal Description

Parcel A:

The South 1/2 of the East 1/2 of the Southwest 1/4 of the Northwest 1/4 of Section 4, Township 4 South, Range 68 West of the 6th Principal Meridian, EXCEPT the East 50 feet thereof, being a tract of land 660 feet, more or less, North and South and 610 feet, more or less, East and West, City and County of Denver, State of Colorado.

Parcel B:

Lots 1, 2, and 3, Block 6, Jerome Park Addition to the City and County of Denver, State of Colorado and part of adjacent alley and reserve strips, described as follows:

Beginning at the Northwest corner of said Lot 3; thence South 133 feet more or less along the extended West line of Lot 3, to a point on the centerline of the vacated alley adjoining; thence West along said centerline 175 feet more or less (174.90 feet as measured) to the extended West line of Lot 10; thence South 12.62 feet more or less (11.55 feet as measured) along said extended line to the South line of the reserved strip lying South of Jerome Park Addition; thence East along said South line 279.38 feet (279.55 feet as measured) to the East line of the reserved strip lying East of Lot 1 in said Block; thence North 145.2 feet (143.93 feet as measured) along said East line of strip to a point on the North line of Lot 1 extending East; thence West 102.4 feet more or less along said extended line to the Point of Beginning.

AND

Lots 4 through 10, Block 6, Jerome Park Addition to the City and County of Denver, Colorado together with the North 1/2 of the vacated alley adjoining said lots, City and County of Denver, State of Colorado.

Parcel C:

A part of the Northeast 1/4 of the Northwest 1/4 of the Southwest 1/4 of section 4, Township 4 South, Range 68 West of the 6th Principal Meridian, described as follows:

Commencing at a point 75 feet West of the Northeast corner of the Northwest 1/4 of the Southwest 1/4 of said Section 4, thence West 140 feet, (140.11 feet as measured) thence South 75 feet, thence East 140 feet, (139.95 feet as measured) thence North 75 feet to the Point of beginning, City and County of Denver, State of Colorado.

APPENDIX B

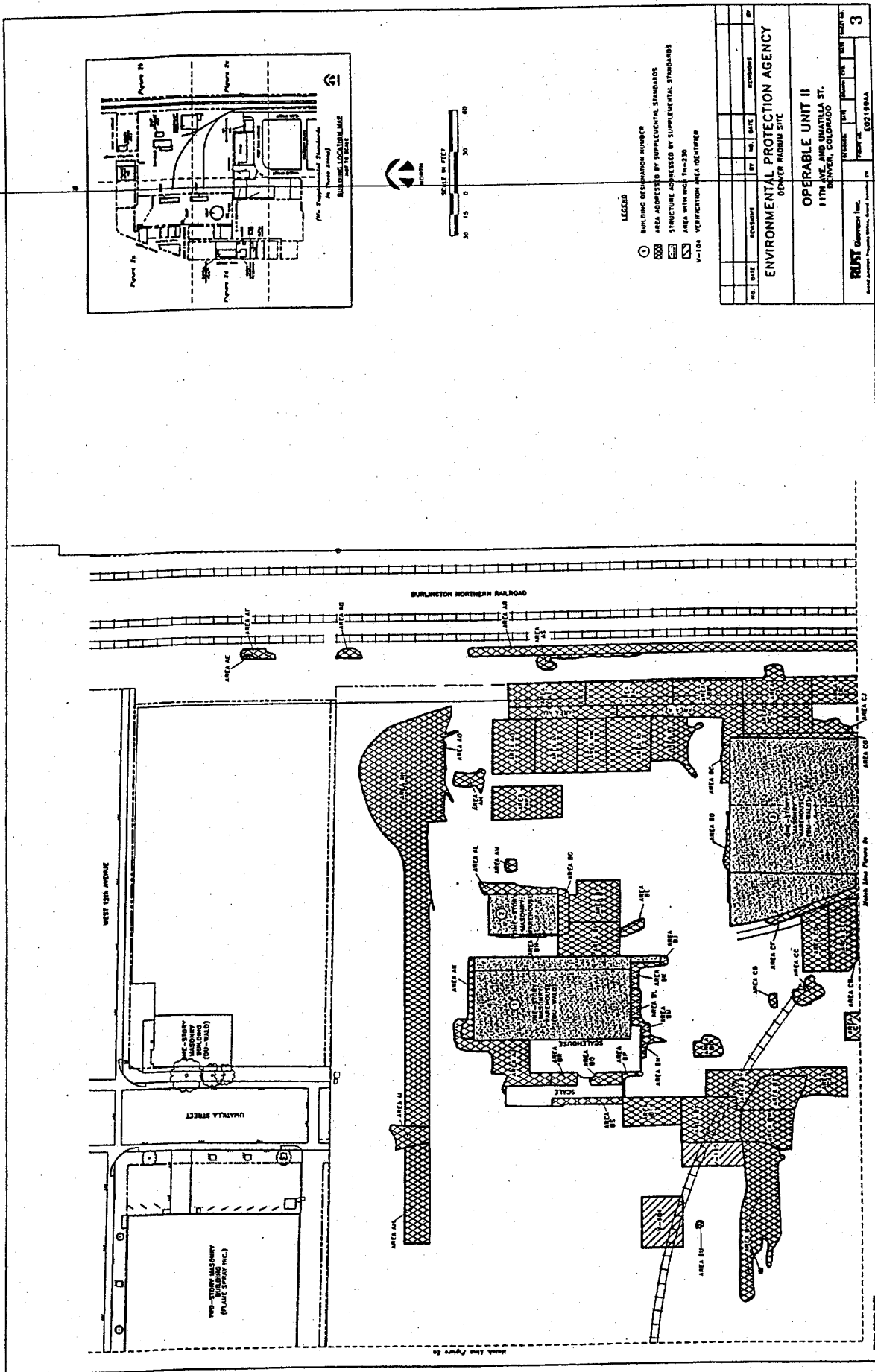


Figure 2b. Site Map

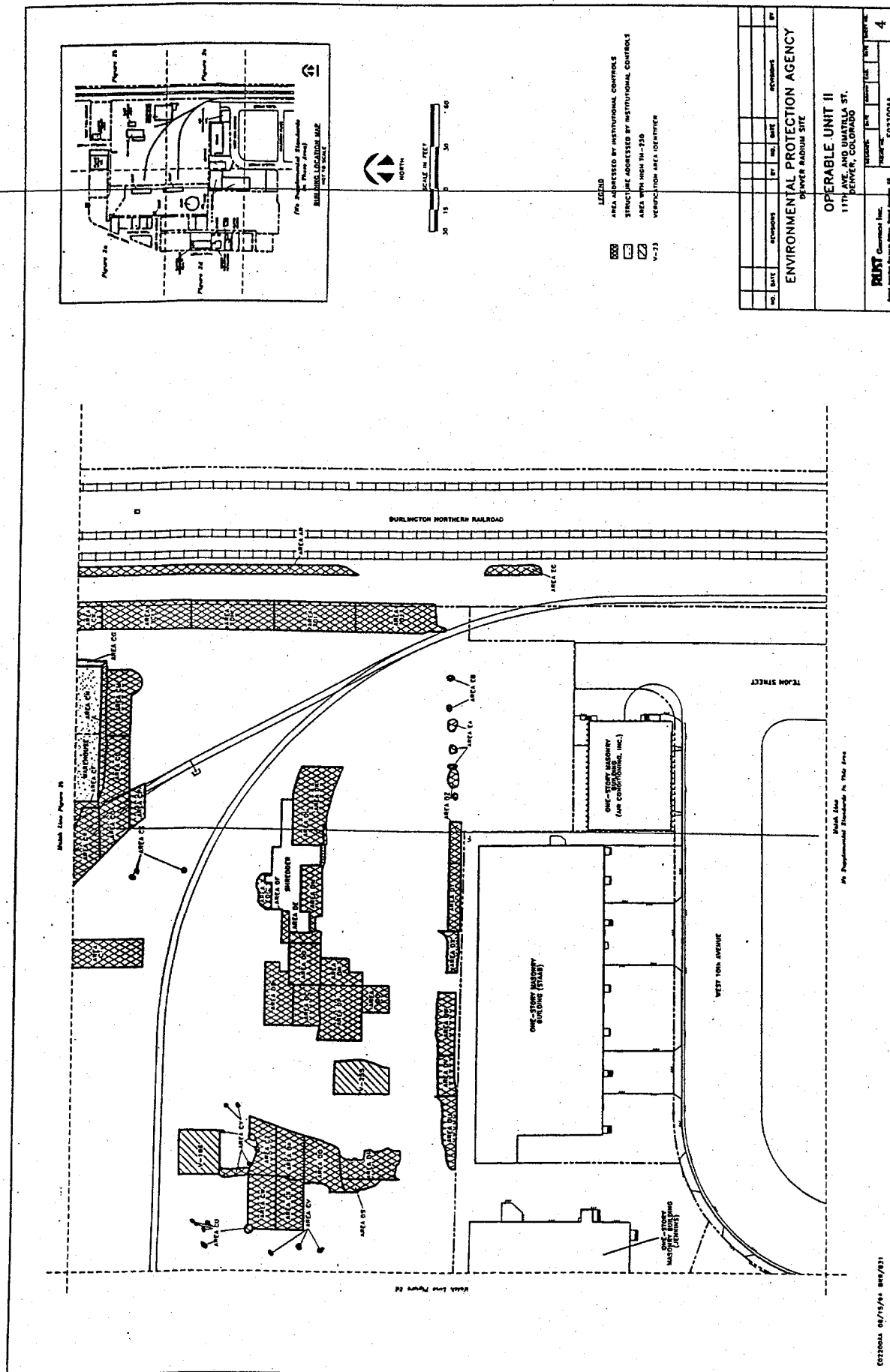


Figure 2c. Site Map

APPENDIX C

This property is subject to an Environmental Covenant held by the Colorado Department of Public Health and Environment pursuant to section 25-15-321, C.R.S.

ENVIRONMENTAL COVENANT

By this deed, Atlas Umatilla, LLC ("Atlas") grants an Environmental Covenant ("Covenant") this ____ day of July, 2005 to the Hazardous Materials and Waste Management Division of the Colorado Department of Public Health and the Environment ("the Department") pursuant to § 25-15-321 of the Colorado Hazardous Waste Act, § 25-15-101, *et seq.* The Department's address is 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530.

WHEREAS, Atlas is the owner of certain real property located at 1100 Umatilla, more particularly described in Attachment A, attached hereto (hereinafter referred to as "the Property"); and

WHEREAS, prior to Atlas' ownership, the Property has been the subject of United States Environmental Protection Agency ("EPA") remedial action pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601, *et seq.* ("CERCLA"); and

WHEREAS, the purpose of this Covenant is to ensure continued protection of human health and the environment by implementing the institutional controls called for in the Denver Radium Superfund Site Record of Decision for Operable Unit II for the Property ("ROD"); and

WHEREAS, Atlas desires to subject the Property to certain covenants and restrictions as provided in Article 15 of Title 25, Colorado Revised Statutes, which covenants and restrictions shall burden the Property and bind Atlas and all parties having any right, title or interest in the Property, or any part thereof, their heirs, successors and assigns, and any persons using the land, as described herein, for the benefit of the Department.

NOW, THEREFORE, Atlas hereby grants this Environmental Covenant to the Department, and declares that the Property as described in Attachment A shall hereinafter be bound by, held, sold, and conveyed subject to the following requirements set forth in paragraphs 1 through 10 below, which, except as provided in paragraph 3, shall run with the Property in perpetuity and be binding on all parties having any right, title or interest in the Property, or any part thereof, their heirs, successors and assigns, and any persons using the land, as described herein. As used in this Environmental Covenant, the term OWNER means the record owner of the Property and, if any, any other person or entity otherwise legally authorized to make decisions regarding the transfer of the Property or placement of encumbrances on the Property, other than by the exercise of eminent domain.

1. Purpose of this covenant. The purpose of this Covenant is to ensure protection of human health and the environment by minimizing the potential for exposure to any radium-

contaminated soil that remains at the Property. EPA remedial action did not remove all the radium-contaminated soils from the Property. Attachment B is a schematic of the Property, which depicts where radium-contaminated soils were left in place at the conclusion at the EPA remedial action. As of the date of this Covenant, nearly the entire surface of the Property is covered with a concrete pavement cap. The Covenant will ensure protection of human health and the environment and mitigate hazards associated with human exposure to the remaining radium-contaminated soil by minimizing activities which will disturb soil or groundwater underneath the concrete cap and by assuring protective indoor air quality is maintained within fully enclosed buildings above radium-contaminated soil on the property.

2. Use restrictions applicable to the Property.

- A. No person shall breach the concrete cap or disturb the subsurface soils underneath the concrete cap except pursuant to a Materials Management and Health and Safety Plan (the "Plan"). The current Plan approved by the Department is on file with the Department at the address indicated in paragraph 10, below. In the event that any person breaches the concrete cap or disturbs the subsurface soils underneath the concrete cap in accordance with the Plan, no radium-contaminated materials, as defined by the Plan, shall be replaced in any location not denoted on Attachment B as "addressed by supplemental standards" without first amending this Environmental Covenant pursuant to paragraph 3, below, to indicate where such materials will be located.
- B. The Owner shall inspect the concrete cap at least twice each calendar year and perform sufficient maintenance of the concrete cap to assure the concrete cap restricts human exposure to radium-contaminated soils.
- C. Except for the purpose of environmental monitoring, groundwater beneath the Property shall not be used for any purpose.
- D. The Owner shall monitor and maintain indoor air quality within fully enclosed buildings on the Property to protect human health from radium exposures, to include compliance with 40 CFR Section 192.12(b).

3. Modifications. This Covenant runs with the land and is perpetual, unless modified or terminated pursuant to this paragraph. OWNER may request that the Department approve a modification or termination of the Covenant. The request shall contain information showing that the proposed modification or termination shall, if implemented, ensure protection of human health and the environment. The Department shall review any submitted information, and may request additional information. If the Department determines that the proposal to modify or terminate the Covenant will ensure protection of human health and the environment, it shall approve the proposal. No modification or termination of this Covenant shall be effective unless the Department has approved such modification or termination in writing. Information to support a request for modification or termination may include one or more of the following:

- A. A proposal to perform additional remedial work;
- B. New information regarding the risks posed by the residual contamination;
- C. Information demonstrating that residual contamination has diminished;
- D. Information demonstrating that the proposed modification would not adversely impact the remedy and is protective of human health and the environment; and

E. Other appropriate supporting information.

4. Conveyances. OWNER shall notify the Department at least fifteen (15) days in advance of any proposed grant, transfer or conveyance of any ownership in any or all of the Property.

5. Notification to Holders of Interest in Property. OWNER agrees to incorporate either in full or by reference the restrictions of this Covenant in any leases, licenses, or other instruments granting a right to use the Property.

6. Notification for proposed construction and land use. OWNER shall notify the Department simultaneously when submitting any application to a local government for a building or utility permit or change in land use.

7. Inspections. The Department shall have the right of entry to the Property at reasonable times with prior notice to OWNER for the purpose of determining compliance with the terms of this Covenant. Nothing in this Covenant shall impair any other authority the Department may otherwise have to enter and inspect the Property.

8. No Liability. The Department does not acquire any liability under State law by virtue of accepting this Covenant.

9. Enforcement. The Department may enforce the terms of this Covenant pursuant to §25-15-322 C.R.S.

10. Notices. Any document or communication required under this Covenant shall be sent or directed to:

State Superfund Officer, Denver Radium Superfund Site
Hazardous Materials and Waste Management Division
Colorado Department of Public Health and the Environment
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

With a courtesy copy to:

Assistant Attorney General, Denver Radium Superfund Site
Colorado Department of Law
Natural Resources and Environment Section
1525 Sherman Street, 5th Floor
Denver, Colorado 80203

11. Annual Reports. Each year OWNER shall submit a report describing any activities at the Property which relate to the use restrictions of paragraph 2, above.

12. Incorporation of Attachments. Attachments A and B, attached to this Covenant, are incorporated herein by reference as though fully set forth.

Atlas has caused this instrument to be executed this 10th day of July, 2005.

Atlas Umatilla, LLC
A Colorado Limited Liability Company

By: _____
Michael E. Rosen, Manager

STATE OF COLORADO)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of July, 2005 by
Michael E. Rosen, Manager, on behalf of Atlas Umatilla, LLC.

Notary Public

Address

My commission expires: _____

Attachments:
Attachment A
Attachment B

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APPENDIX C

Attachment A

Exhibit A - Legal Description

Parcel A:

The South 1/2 of the East 1/2 of the Southwest 1/4 of the Northwest 1/4 of Section 4, Township 4 South, Range 68 West of the 6th Principal Meridian, EXCEPT the East 50 feet thereof, being a tract of land 660 feet, more or less, North and South and 610 feet, more or less, East and West, City and County of Denver, State of Colorado.

Parcel B:

Lots 1, 2, and 3, Block 6, Jerome Park Addition to the City and County of Denver, State of Colorado and part of adjacent alley and reserve strips, described as follows:

Beginning at the Northwest corner of said Lot 3; thence South 133 feet more or less along the extended West line of Lot 3, to a point on the centerline of the vacated alley adjoining; thence West along said centerline 175 feet more or less (174.90 feet as measured) to the extended West line of Lot 10; thence South 12.62 feet more or less (11.55 feet as measured) along said extended line to the South line of the reserved strip lying South of Jerome Park Addition; thence East along said South line 279.38 feet (279.55 feet as measured) to the East line of the reserved strip lying East of Lot 1 in said Block; thence North 145.2 feet (143.93 feet as measured) along said East line of strip to a point on the North line of Lot 1 extending East; thence West 102.4 feet more or less along said extended line to the Point of Beginning.

AND

Lots 4 through 10, Block 6, Jerome Park Addition to the City and County of Denver, Colorado together with the North 1/2 of the vacated alley adjoining said lots, City and County of Denver, State of Colorado.

Parcel C:

A part of the Northeast 1/4 of the Northwest 1/4 of the Southwest 1/4 of section 4, Township 4 South, Range 68 West of the 6th Principal Meridian, described as follows:

Commencing at a point 75 feet West of the Northeast corner of the Northwest 1/4 of the Southwest 1/4 of said Section 4, thence West 140 feet, (140.11 feet as measured) thence South 75 feet, thence East 140 feet, (139.95 feet as measured) thence North 75 feet to the Point of beginning, City and County of Denver, State of Colorado.

APPENDIX C

Attachment B

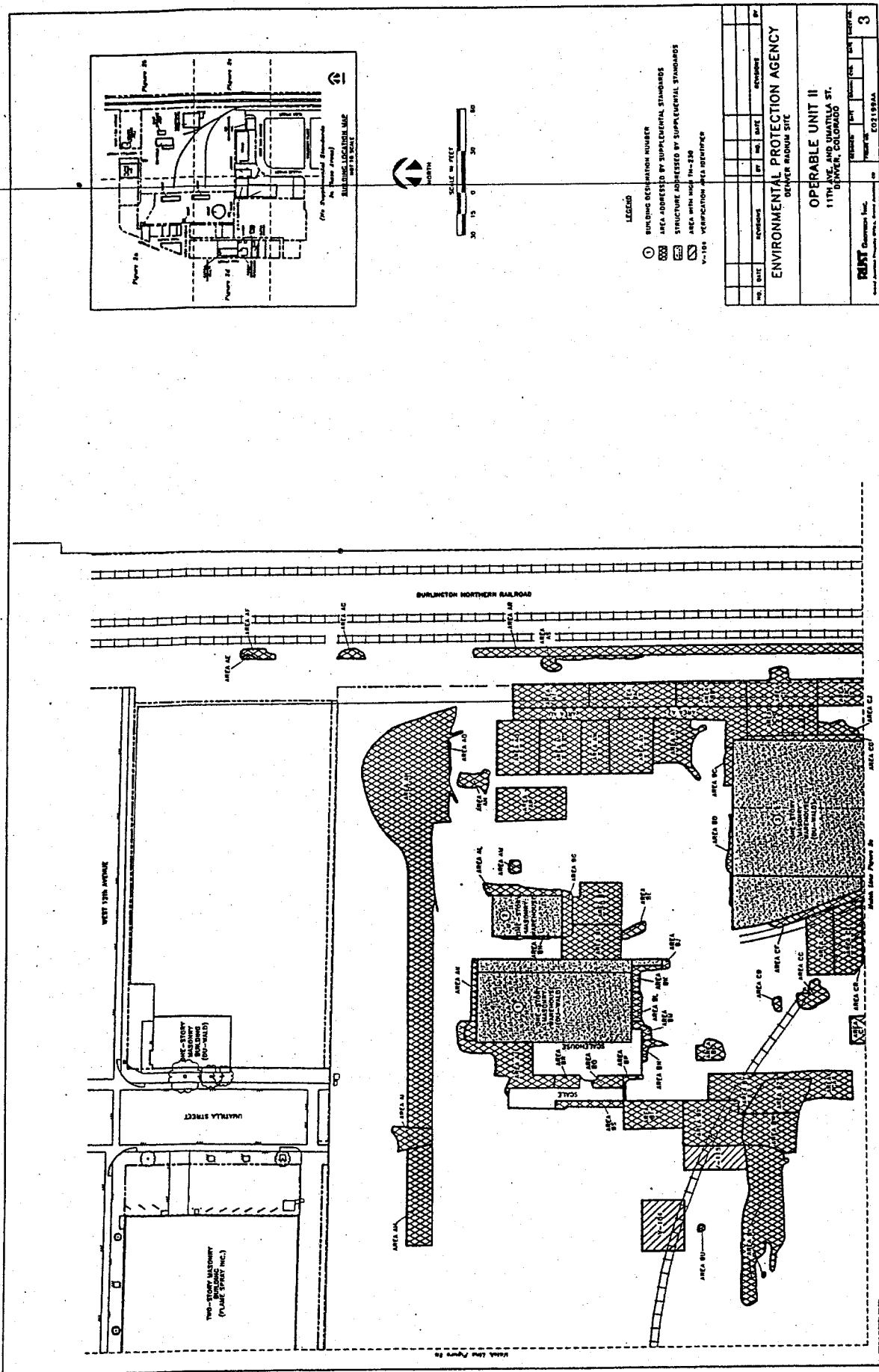


Figure 2b. Site Map

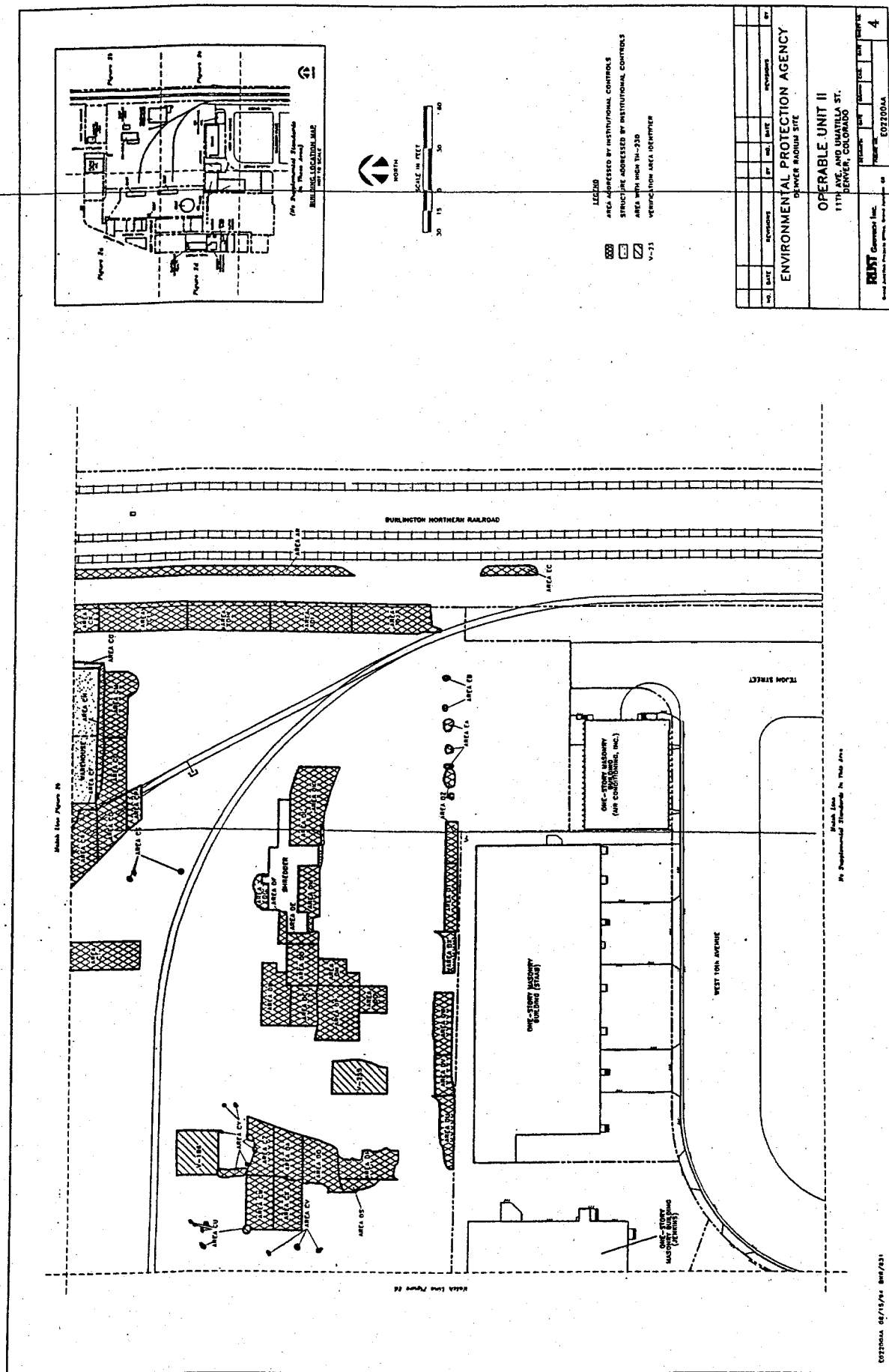


Figure 2c. Site Map

APPENDIX D

MATERIALS MANAGEMENT AND HEALTH AND SAFETY PLAN

**1100 UMATILLA STREET
DENVER, COLORADO**

October 1, 2003

Revised

February 20, 2004

Second Revision

June 30, 2004

Third Revision

March 6, 2005

Prepared By:

Engineering Management and Support
12335 West 53rd Avenue, Suite 201
Arvada, Colorado 80002

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Attachment A; CDPHE Approval Letter dated August 19, 2004

1.0 INTRODUCTION

This Materials Management and Health and Safety Plan (Plan) shall apply to and be implemented whenever there are plans to breach the concrete cap at 1100 Umatilla ("Property") and expose any underlying soils which may contain radium-contaminated materials. This Plan shall be implemented by any owner, lessee or licensee of 1100 Umatilla which will undertake activities to which this Plan is applicable. This Plan presents procedures for the handling of materials contaminated with radium-226 and its progeny exceeding U.S. Environmental Protection Agency (EPA) standards during such activities. Site-specific health and safety procedures are also documented within this Plan. The activities include, but may not be limited to, the following:

- Utility cuts (private sector; contractor¹, or municipal)
- Natural gas (Xcel Energy)
- Electrical (Xcel Energy)
- Telephone (Qwest, AT&T, US Sprint, MCI)
- Cable (Comcast)
- Water taps (new service, repair, or modification)
- Sewer taps (new service, repair, or modification)
- Water Supply
- Sanitary sewer
- Storm sewer
- Manhole alignment
- Building foundations
- Removal and disposal of radium-contaminated materials.

¹ "Contractor" shall be construed to include any contractor (plumbing, mechanical, etc.) licensed to perform Activities on or under the Site. The conditions and requirements of this Plan shall also be binding on any unlicensed contractor or other entity performing Activities on or under the Site, notwithstanding such contractor or entity may be in violation of Article VIII of Chapter 49 of the City and County of Denver Municipal Code. The property owner shall assure that any entity or person involved in any project subject to this Plan shall be properly licensed or certified pursuant to existing regulations for such Activities.

This Plan was approved with modifications by the Colorado Department of Public Health and Environment (CDPHE) on August 19, 2004. A copy of CDPHE's approval letter including the specific modifications required by CDPHE is included as Attachment A to this Plan.

1.1 SITE HISTORY

The Atlas Metals 1100 Umatilla property (Site) is one of forty five properties that comprise the Denver Radium Superfund Site along the South Platte River Valley that were contaminated as a result of the radium processing industry in Denver during the period from 1915 to 1927. Production of refined radium produced large quantities of radioactive waste materials. Generally, these materials were discarded or left on-site when the processing facilities were closed. The 1100 Umatilla property, formerly known as the Du-Wald property, is a 10.5-acre site that is included in Operable Unit II of the Denver Radium Superfund site. Radium contamination on the site is the result of processing activities conducted by the Schlesinger Radium Company and the Radium Company of Colorado between 1914 and 1923.

The City of Denver owned the site from 1938 to 1948 and operated a municipal landfill on the southern portion of what is now the site. In addition to household waste, broken battery casings were placed in the landfill. In the late 1950s and early 1960s, an operation to reclaim lead from batteries was conducted in the northeast quadrant of the site in the area surrounding the east storage building. This operation resulted in commingled contamination as well as lead-only contaminated soils.

The Denver Radium Superfund Site was placed on the EPA's Interim Priorities List in October 1981 and on the National Priorities List in September 1983. EPA released a Remedial Investigation for the site (OU II) in April of 1986 and a Draft Feasibility Study in August of 1987. No Final Feasibility Study was released. Additional characterization of the radiologic contamination was conducted during the design of the remedy and is documented in Supplemental Data Release for Operable Unit II, by UNC Geotech (December 1988). The discovery of non-radiologic contamination (primarily lead) on the site prompted more data gathering that is presented in "Radiologic and Selected Metals Assessment of the Du-Wald Steel Corporation Property, OU II" (UNC Geotech, December 1990).

1.2 SUMMARY OF REMEDIAL ACTIONS COMPLETED

The following is a summary of the remedial actions completed by EPA and contamination left in place:

1. Removal of approximately 81,000 cubic yards of contaminated material;
2. Installation of a radon mitigation system in the office building;
3. Radiological contamination left in place under buildings, under the historic shredder's feeder, near utility lines, below groundwater, and on the railroad right-of-way; and
4. Contaminated material moved to an off-site licensed, permanent disposal facility.

The depth of removal is estimated to range between 5 and 10 feet below existing grade. No documentation has been found to verify the depths, volumes, cleanliness, or structural properties of the fill imported to the site. Attachment 1 is an EPA document illustrating where radium-contaminated soil was left in place.

1.3 PRESENT CONDITIONS

Almost all of the Property is covered with reinforced concrete pavement. The topography is fairly level with a slight westerly slope. Two major water conduits, Denver Water Department Conduit 12 and Conduit 18, run east west across the center of the Property. Both of the conduits are approximately five feet deep and carry treated water for residential and commercial use. Another water supply conduit runs north south on the eastern boundary of the Property. There are five buildings and approximately 0.3 miles of railroad track on the Property.

1.4 APPLICABILITY OF PLAN

This Plan shall be applicable to any activities at the Property which will breach or remove any portion of the concrete cap or when radium-contaminated soils under the concrete

cap may be exposed (hereafter “Activities”). Such Activities include, but may not be limited to, the following:

- Utility cuts (private sector; contractor, or municipal)
- Natural gas (Xcel Energy)
- Electrical (Xcel Energy)
- Telephone (Qwest, AT&T, US Sprint, MCI)
- Cable (Comcast)
- Water taps (new service, repair or modification)
- Sewer taps (new service, repair, or modification)
- Water Supply
- Sanitary sewer
- Storm sewer
- Manhole alignment
- Building foundations
- Removal and disposal of radium-contaminated materials.

2.0 HEALTH AND SAFETY AND MONITORING PROCEDURES

This section includes Site-specific health and safety procedures to be implemented during Activities at the Site to which this Plan applies pursuant to section 1.4. The Property owner shall be responsible for having this Plan on Site and assuring its implementation and adherence by all persons on Site during activities to which the Plan is applicable.

2.1 WORKER HEALTH AND SAFETY

The principal factor in hazard control and worker health and safety is training. Workers cannot guard against hazards if they are not aware of the dangers in their workplace. The requirements of OSHA, 29 CFR 1910 regulations are used as guidance for this Plan.

The basis for this Plan is that there is potentially contaminated soil on the Site for which workers may be exposed during Activities at the Site. There are three potential pathways to humans working on the Sites due to the potential for above-background presence of these radioactive elements. The potential pathways are:

1. Direct gamma radiation exposure from the decay of radium and its progeny;
2. Inhalation of radon gas, the immediate decay product of radium, radon's own short-lived decay products, and contaminated particulate, and;
3. Ingestion of contaminated materials.

2.1.1 Radiation Safety Officer

A Radiation Safety Officer (RSO) shall be appointed by Atlas to supervise all aspects of implementation of this Plan, perform necessary monitoring, and collect and maintain documentation required by this Plan. The RSO will have the knowledge, responsibility and authority to apply appropriate radiation protection regulations. The RSO shall ensure that radiation safety activities are being performed in accordance with the requirements of this Plan.

The RSO shall be responsible for establishment of the exclusion zone around each work area and for ensuring that only workers with the appropriate training and documentation of such training are allowed within the exclusion zone. The RSO shall insure that the scintillometer or other field meters used to characterize soil encountered during Plan Activities and to monitor worker health and safety are properly calibrated. The RSO shall also ensure that all required field measurements are obtained as required by this Plan to protect worker safety and to characterize excavated soil for segregation and subsequent testing.

The RSO will be responsible for ensuring that excavated soil that exceeds the field screening criteria are properly segregated, containerized and covered, for scheduling of additional testing of the segregated soil. The RSO shall also ensure that the segregated soils are isolated and managed in a manner to prevent contact by other workers not involved in Plan-related Activities or by Property visitors until results of additional sampling are obtained indicating that the soils are suitable for placement back in the excavation or as general fill or alternatively until contaminated soils are transported offsite for storage or disposal at a licensed facility.

2.1.2 Training Requirements

Worker health and safety are regulated under OSHA as stipulated in 29 CFR 1910. Training is regulated by 29 CFR 1910.120 (e). Personnel working on the Site or that may come into contact with contaminated materials, should fall under the criteria specified below:

- Workers on-Site only occasionally for a specific limited task, and who are unlikely to be exposed over permissible exposure limits, shall receive a minimum of 24 hours of instruction, and;
- The RSO and other on-Site management or supervisors directly responsible for, or who supervise employees engaged in, Activities shall receive 40 hours initial training and three days of supervised field experience (the training may be reduced to 24 hour of initial training, if the only area of responsibility is employees as specified above).

The Property owner shall be responsible for insuring that all Site workers provide adequate documentation certifying OSHA health and safety training in accordance with 29 CFR 1910.120. Workers who cannot provide training certification will be denied access to the controlled area.

The OSHA health and safety training for the RSO will include additional instruction related to radiation awareness. The RSO will be responsible for providing workers conducting Activities with information related to radiation awareness as part of a safety briefing to be performed prior to the initiation of each and every Activity that is subject to this Plan.

2.1.3 Personnel Monitoring

Personnel monitoring of Site workers will be conducted. During the initial Site access, monitoring for surface contamination and radiation levels shall be performed in sufficient detail to characterize the exposure and implement Site controls. Types of personnel monitoring can include: 1) radiation dose rate by individual thermoluminescent dosimeter (TLD) or similar passive devices (e.g., OSL), portable dose rate meter, or area dosimetry; 2) radioactive surface contamination by a count rate meter (alpha scintillometer, G-M pancake detector or other appropriate detector calibrated for surface activity); or 3) airborne radioparticulates by personnel lapel or area samplers. Personnel monitoring shall be mandatory at all times during Activities on Site. As Atlas does not own an alpha scintillometer or G-M pancake detector, use of these devices may be subject to the availability of rental meters or use of meters made available by CDPHE or other agency.

TLDs, portable dose rate meters, and area dosimetry may assess true, whole body gamma exposures to monitored workers. TLDs record the amount of gamma radiation exposure on a crystalline chip within the TLD badge unit (the size of a matchbook). The TLD is attached to a given worker between the neck and waist at the location where the highest dose is received. Personnel standing outside the trench should be advised to locate the

TLD at the waist. Personnel working in the trench should be advised to locate the TLD higher on the torso in order to locate it at the location of highest exposure (i.e., close to the asphalt).

The personnel monitoring that will be employed at the Site during Activities includes the TLD badges and the alpha scintillometer or pancake detector subject to the condition on availability of such meters as described above. Prior to leaving the exclusion zone, all workers who have entered the excavation or the area of stockpiled soils from an excavation will be scanned with the alpha scintillometer or pancake detector for the presence of contamination. In the event of a detection of contamination, workers will brush their clothing to remove any soil or other potentially contaminated mud or dust and be re-tested. In the event that brushing does not result in background readings, the worker will be instructed to remove their outer garments for placement in plastic bags. If necessary, the worker will be provided replacement clothing and will be instructed to thoroughly wash the contaminated clothing immediately.

The RSO will be responsible for ensuring that all personnel monitoring is performed and that the results of such monitoring are recorded, reviewed and kept in records as provided in section 4.0.

2.1.4 Site/Area Monitoring

The Property owner shall be responsible for monitoring conditions at the worksite and immediate surrounding area. Monitoring activities shall consist of the following:

- All portable instrumentation will be calibrated with a known source according to ANSI N323 B. The date, time, source, readings, and any adjustments should be recorded. Daily operational checks should be made and the results recorded.
- For background and soil pile measurement gamma scintillometer readings, the meter should be in the slow mode and the appropriate scale. For initial surveys of work areas, the scintillometer should be in medium or fast mode to better identify possible contaminated areas. The date, time, area,

and maximum deflection for all scintillometer readings should be recorded.

- Background site readings are to be taken at least daily at the gate. The readings should be taken at three locations that are consistent and reproducible. For example, the readings can be taken at each end of the gate and the middle. These readings will be used as the basis for identification of potentially contaminated soil that may be encountered in an excavation and that may require additional offsite analytical testing.
- Background working area readings should be taken at four locations (e.g., north, south, east, and west) of the excavation within 20 feet of the work area boundaries. These four readings should be averaged for comparison to the excavation readings.
- Excavation readings should be taken when the concrete cap is breached and excavation activities are first conducted and periodically throughout the day. At a minimum, one reading should be obtained for every 10 feet by 10 feet (100 square feet) area of excavation. As the excavation goes deeper (beyond 10 feet deep) a reading should be taken every foot. A sketch of each excavation should be made, indicating the areas within each excavation that the readings were taken, and a frame of reference to the location of the excavation on the site. Readings should be made within 15 cm of the surface of the excavation.
- The excavation readings should be compared to the average background readings and any soil that exhibits gamma scintillometer readings at or above three (3) times the average background reading as measured at the gate should be segregated and contained (roll-off containers or other watertight containment).
- Copies of all the readings and sketches should be reviewed at a minimum of weekly intervals, or more frequently by the RSO. The RSO should review all data as soon as possible to identify trends, etc.

2.1.5 Hazard Evaluation

Aside from the potential hazards associated with radiation that is addressed in Section 2.1.2, there exists a potential for physical hazards. Physical hazards that may be encountered include the presence of heavy equipment (i.e., backhoe, trucks), open trenches or excavations, exposure to electrical and other utility hazards, and noise. In

addition, there is a possibility of slip/trip/fall hazards from holes, uneven pavement, unused construction equipment, sharp objects (i.e., nails, metal shards), and slippery surfaces.

Finally, the potential for extreme weather conditions may exist depending upon the implementation schedule. Extreme weather conditions may include excessive heat or cold, thunderstorms, high wind conditions, heavy rains, and snow/ice. Special precautions will be taken during periods of extreme weather, and work may be halted until the severe weather has subsided. For example, work will be halted under windy conditions (sustained wind speeds over 20 mph or conditions that result in visible dust from the excavation or stockpiled soils being blown around). In addition, subcontractors may elect to independently halt their activities in the event of extreme weather conditions, especially thunderstorms.

2.1.6 Excavations and Trenches

During the excavation of utility and piping trenches, proper excavation and trenching procedures must be followed as outlined in 29 CFR 1926.650 through .653 (Subpart P. Excavations, Trenching, and Shoring). In particular, the requirements for shoring, sloping, and access/egress must be followed. In addition, all underground utilities (gas, electric, water) at the site must be identified and marked by the subcontractor prior to the commencement of any excavation and/or trenching activity. Workers are not allowed to enter any trenches or excavations unless an observer is present outside of the excavation/trench area.

2.1.7 Operation of Mechanized Equipment and Motor Vehicles

All mechanized equipment (e.g., backhoe, bulldozers) and other motor vehicles (support trucks, dump trucks, forklifts) will only be operated by qualified personnel who have been trained by their employer in the proper use of the equipment. The equipment will be operated according to all applicable OSHA and Department of Transportation (DOT)

regulations. Specifically, the requirements of 29 CFR 1926.600 through .606 (Subpart O. "Motor Vehicles, Mechanized Equipment, and Marine Operations") will be observed, including, but not limited to the following:

1. Seat belts must be worn at all times.
2. All heavy equipment must be equipped with a reverse signal alarm.
3. All earth moving equipment must be equipped with rollover protective structures.

2.1.8 Struck-By and Caught-In/Caught-Between Hazards

The potential for being struck by falling or swinging objects, or situations where an employee is caught in or caught between heavy equipment and/or other items, are to be minimized by following any and all appropriate OSHA precautions. In particular, the subcontractor should incorporate provisions of 29 CFR 1926.600 (a)(3)(i), which refers to suspension of equipment or parts, 29 CFR 1926.651(e), which refers to falling loads, and 29 CFR 1926, Subpart O. which refers to machinery and heavy equipment.

Precautions should include, but not be limited to:

1. Site personnel must listen for back up alarms and watch for spotters and backing equipment.
2. The use of towing and lifting equipment should be in accordance with OSHA and other applicable requirements.

2.1.9 Exclusion Zone

A clearly defined exclusion zone will be established around each of the controlled (work) areas to prevent the public from contacting potentially contaminated materials. Because a fence restricts access to the site and the only entrance is through a gate, the fence and restricted access shall be considered sufficient for the exclusion of trespassers on the Site. To protect other workers or other persons not involved with Activities, these controlled (work) areas shall be marked with cones, or other suitable markings, to distinguish these areas from other areas on the Site.

The area in which potentially contaminated or contaminated material, if any, is stockpiled shall have markings (i.e., yellow caution tape or cones) to warn personnel of the potential for exposure.

Access to the controlled (work) areas will be limited to personnel who are required for performance of the subject Activities and who have documented the necessary training as described in Section 2.1.2 of this Plan. All other workers or other persons not involved in Plan-related Activities will be restricted from entering the exclusion zone. The RSO will be responsible for ensuring that only those individuals that are required to enter the exclusion zone and that have the appropriate training are allowed to enter the exclusion zone.

All personnel that enter the exclusion zone around trenching, excavations or other operations that result in breaching the concrete cap over areas not previously remediated or the soil stockpile areas will be subjected to scanning with the scintillometer prior to leaving the exclusion zone as previously described in Section 2.1.3 of this Plan.

2.1.10 Personnel Protective Equipment

It shall be mandatory for all personnel involved in the Activity to wear Level D personnel protective equipment (PPE). The PPE required includes the following:

- Hard hat;
- Safety shoes;
- Pants;
- Eye protection; and
- Ear protection, as necessary.

Additional PPE may be required in the exclusion zone (including the area of stockpiled material) including latex gloves and Tyvek® suits.

2.2 EMERGENCY CONTACTS

In the event of an emergency related to Site operations, notification of appropriate contacts should be made. The following persons shall be contacted in the event of an emergency:

1. Immediate supervisor of the person injured;
2. Atlas Safety manager;
3. Medical emergency requiring immediate attention – 911

In the event that an emergency call to 911 is impractical and a visit to the emergency room at a hospital is required, personnel should be familiar with the location and most direct route to the nearest hospital. The nearest hospital is Denver Health Medical Center and the directions from the Site to the hospital are as follows:

<u>Directions</u>	<u>Miles</u>
Start: Depart 1100 Umatilla St, Denver, CO 80204 on Umatilla St (North)	0.1
1: Turn LEFT (West) onto W 12th Ave	0.1
2: Road name changes to Yuma St	0.3
3: Take Ramp (RIGHT) onto I-25 [US-87] towards I-25	0.2
4: At exit 210A, turn RIGHT onto Ramp towards US-40 / Colfax Ave	0.4
5: Take Ramp (RIGHT) onto I-70 Bus [US-40] towards US-40 / Colfax Avenue	0.7
6: Turn RIGHT (South) onto Speer Blvd	0.9
7: Turn RIGHT (South-West) onto Bannock St	< 0.1
End: Arrive Denver Health Medical Center (hospital), Denver, Colorado	

Alternatively, the following route may be taken if traffic on I-25 is heavy:

<u>Directions</u>	<u>Miles</u>
Start: Depart 1100 Umatilla St, Denver, CO 80204 on Umatilla St (North)	0.1
1: Turn RIGHT (East) onto W 13th Ave	0.7

2: Turn RIGHT (South) onto Kalamath St	0.1
3: Turn LEFT (East) onto W 12th St	0.1
4: Turn RIGHT (South) onto Inca St.	0.1
5: Turn LEFT (East) onto W 11 th Ave	0.2
6: Turn RIGHT (South) onto Speer Blvd	0.4
7: Turn RIGHT (South-West) onto Bannock St	< 0.1

End: Arrive Denver Health Medical Center (hospital), Denver, Colorado

In the event of a release of potentially contaminated material (i.e., run off containing suspended sediment from an excavation or stockpile of contaminated soil), the following parties shall be notified as appropriate:

- Colorado Department of Public Health and Environment – Mark Rudolph
- Environmental Protection Agency – Rebecca Thomas
- National Response Center

2.3 OPERATIONAL CONSIDERATIONS

Operational considerations during operations at the Site include reduction of contaminant spread and public content. The following sections describe control procedures for each of the operational considerations during Activities to which this Plan is applicable.

2.3.1 Reduction of Contaminant Spread

Contaminants may spread from the active work area to the surrounding areas through a variety of mechanisms that include, but are not limited to, the following:

- Generation of dust containing radionuclides;
- Movement of particulate matter in water; and
- Physical removal from the Site on worker's clothing or other direct mechanism.

Every effort must be made to prevent the spread of contamination or potentially contaminated materials from the Site.

Whenever dust is generated during trenching operations, measures shall be employed to reduce the spread of contamination. For control of dust and particulates, water sprays or mists shall routinely be applied to equipment or areas releasing potentially radioactive dusts. The water spray and mists shall be applied so that no runoff, standing pools, or free water are produced. If any water does accumulate, it shall be contained, monitored, and treated as appropriate. In severe cases, including windstorms or other adverse weather conditions, advance planning to control release of potentially radioactive dusts shall be performed. Measures such as shutting down operations and covering of recently exposed, contaminated areas may be necessary to reduce the potential for radioactive dust release and dispersal. In the event of sustained wind speeds greater than 20 mph or where the mitigation measures described above do not prove sufficient to prevent blowing dust, operations shall be terminated and open excavations and stockpiles of potentially contaminated soil shall be covered, to the extent practical given the conditions, until they can be resumed without causing blowing dust.

Water shall not be introduced to (other than for dust control) or removed from the excavation to the extent practical to prevent the potential for contaminant migration through this media. If precipitation is possible, the excavation should be covered and the area around the excavation modified to prevent surface run-off from entering the excavation.

In the event that water must be removed from the excavation or others areas where the water may have been in contact with contaminated soil, the removed water will be containerized in drums, tanks or other suitable containers and subjected to analytical testing prior to offsite disposal pursuant to applicable regulations.

The purpose of this Plan is to provide procedures that eliminate or restrict emissions or other mechanisms of possible transport of contaminated soil offsite in an uncontrolled manner. In order to prevent uncontrolled releases of contaminants from the Site,

contaminated or potentially contaminated materials shall not be removed from the Site, except as required for off-site disposal.

2.3.2 Public Contact

Activities at the Property may draw the attention of the public. However, access to the Site is restricted by virtue of the fence and gate and section 2.18 provides for a clearly defined exclusion zone. During Activities, the RSO shall be responsible for assuring that unauthorized persons do not enter the exclusion zone and the work areas.

3.0 MATERIALS HANDLING PROCEDURES

Any material removed from the Site surface or subsurface, excluding buildings, shall be monitored with a direct reading scintillometer to determine the level of gamma radiation at the material surface. Based on the level of gamma radiation detected above local background levels, a determination shall be made so that materials can be classified according to established criteria. Material shall be segregated according to the following:

- Background – Materials within three times the average background radiation as determined by the scintillometer, as described in Section 2.1.3.
- Potentially Contaminated: Materials above three times the average background radiation as determined by the scintillometer, as described in Section 2.1.3.

Potentially contaminated materials shall be separated and temporarily stockpiled in clearly marked areas or in roll-off containers or other suitable containers (i.e., yellow caution tape or cones) on Site. Flagging or barricades shall restrict access to these stockpiles or containers. When contaminated materials are not replaced in excavations or removed from the Site by the end of a workday, restricted access to the materials shall be maintained.

Contaminated materials may be retained and returned to the excavation, per Denver's Ordinance. The location of radium-contaminated materials reburied on-site will be documented in the Denver Radium Database managed by the City and County of Denver and will become a permanent part of the file. Reburied material shall be covered with a new, hard surface, such as asphalt or concrete, having a minimum depth of six inches to ensure no direct exposure.

If retention and reburial of contaminated materials is not performed, the materials shall be temporarily stored on Site on plastic sheeting, or in roll offs, or suitable containers in a clearly marked area or immediately packaged or prepared for bulk shipment for transportation in accordance with 49 CFR 173. Soil samples shall be collected for analysis and further characterization to evaluate proper disposal options. A composite

sample shall be collected for every 20 cubic yards of material. A minimum of five subsamples shall be collected from areas within the 20 cubic yards of stockpiled material and composited into one sample for analysis. The sample will be analyzed for radium-226 and for any other parameters required by the disposal facility. Based on the analytical results, the material will either be shipped off-Site for disposal or reburied in the same place if the radium threshold is exceeded. The material may be reused on the Site if the radium threshold is not exceeded in accordance with the City and County of Denver ordinance. The radium threshold for determining whether the material is contaminated with radium-226 is as follows, as per 40CFR192.12. The concentration of radium-226 shall not exceed the background level by more than:

- 5 picoCuries per gram (pCi/g), averaged over the first 15 centimeters (cm) of soil below the surface, and

Atlas must document all contaminated materials prepared for disposal, including volume and destination, and such documentation shall become a permanent part of the Site environmental file. Containerized or bulk materials shall be transported from the Site directly to an approved temporary storage facility or directly to an approved NORM waste facility by a properly licensed and permitted hauler in accordance with all applicable requirements set forth in 49 CFR.

4.0 DOCUMENT RETENTION

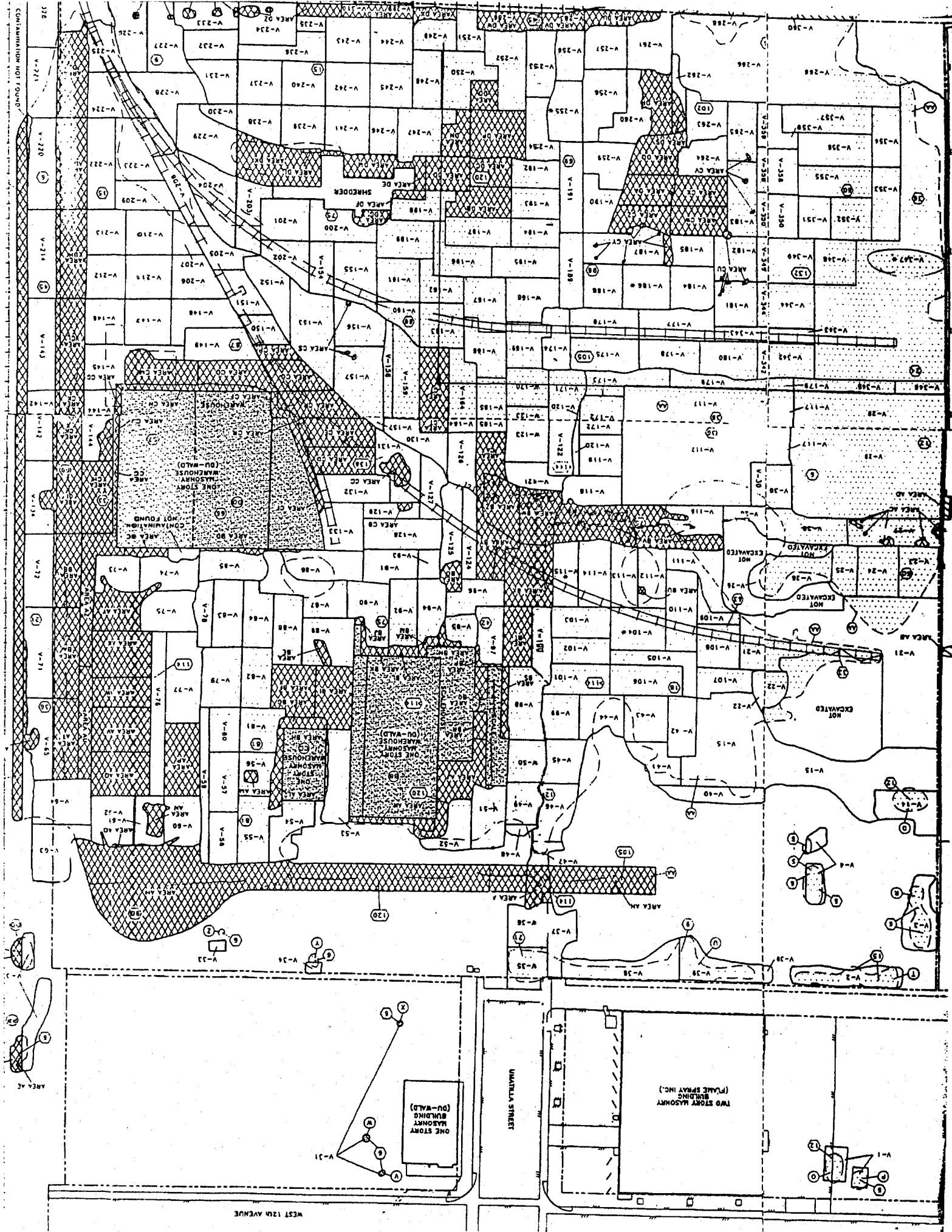
The owner shall maintain at the Property an environmental file. Such files shall contain the following:

- A log book of the RSO which documents all steps required by this Plan during Activities.
- Data resulting from sampling and analysis efforts.
- Reports addressing environmental circumstances of the Property.
- Maps depicting the location of contaminated materials at the Property.
- Documents and correspondence required by this Plan.

Such environmental file shall be kept in perpetuity and shall be available during normal business hours for inspection by the Colorado Department of Public Health and Environment.

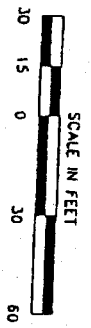
APPENDIX D

Attachment 1



Attachment A

CDPHE Approval Letter 8-19-2004



LEGEND

- BOUNDARY OF ASSESSED CONTAMINATION
- ① DESIGNATION OF RESIDUAL RADIOACTIVE DEPOSIT
- ⑥ DEPTH OF ASSESSED CONTAMINATION (INCHES)
- AREA OF ASSESSED CONTAMINATION
- ② DEPTH OF ASSESSED CONTAMINATION (INCHES) FROM JACOBS ENGINEERING DATA
- V-23 VERIFICATION AREA IDENTIFICATION
- VERIFICATION AREA BOUNDARY
- ▨ AREA OF AVERAGED RA-226 CONCENTRATION
- ▩ AREA ADDRESSED BY SUPPLEMENTAL STANDARDS
- ▩ STRUCTURE ADDRESSED BY SUPPLEMENTAL STANDARDS
- * AREA WITH HIGH TH-230

TAKEN FROM

NO.	DATE	REVISIONS	BY	NO.	DATE	REVISIONS	BY												
ENVIRONMENTAL PROTECTION AGENCY DENVER RADIIUM SITE																			
OPERABLE UNIT II 11TH AND UMATILLA DENVER, COLORADO																			
PLST Georgia Inc			<table border="1"><tr><td>DATE</td><td>TIME</td><td>BY</td><td>NO.</td><td>DATE</td><td>BY</td></tr><tr><td>7/8</td><td>3:45</td><td>PL</td><td>1193</td><td>7/93</td><td>3c</td></tr></table>					DATE	TIME	BY	NO.	DATE	BY	7/8	3:45	PL	1193	7/93	3c
DATE	TIME	BY	NO.	DATE	BY														
7/8	3:45	PL	1193	7/93	3c														

STATE OF COLORADO

Bill Owens, Governor
Douglas H. Benevento, Executive Director

Dedicated to protecting and improving the health and environment of the people of Colorado

4300 Cherry Creek Dr. S.
Denver, Colorado 80246-1530
Phone (303) 692-2000
TDD Line (303) 691-7700
Located in Glendale, Colorado
<http://www.cdphe.state.co.us>

Laboratory Services Division
8100 Lowry Blvd.
Denver, Colorado 80230-6928
(303) 692-3090



Colorado Department
of Public Health
and Environment

August 19, 2004

Mr. Paul Rosasco
Engineering Management Support, Inc.
12335 West 53rd Avenue, Suite 201
Arvada, Colorado 80002

RE: 1100 Umatilla Materials Management Plan Approval with Clarifications

Dear Mr. Rosasco,

Please find this letter as an acceptance with modifications of your Materials and Management Plan dated June 30, 2004. The specific modifications are attached to the document in reference.

1. Alpha scintillometer or pancake detectors will be procured prior to work commencement. The inability to procure an alpha scintillometer or pancake detectors is not a valid excuse that allows site excavation to start without one of these detectors on site. The availability for one of these detectors has been guaranteed from a third party source to EMSI for the sole purpose of site related screening at 1100 Umatilla Street.
2. The Colorado Department of Public Health and Environment shall be notified in writing at least 72 hours prior to any breach to the site cap/ barrier system or where there is a situation in which the site cover might be breached or damaged. Notification by telephone may be made for information purposes only. This notification shall include a summary of the site activity and any associated drawings, engineering specifications, materials or communications that may be generated as part of this breach. Evidence (certified mail return receipt or signed receipt) of notification shall be maintained in the Operations and Maintenance Records as documentation of proper notification. Send written notification to:

Mark Rudolph, Denver Radium Site Project Manager
Colorado Department of Public Health and Environment
Hazardous Materials and Waste Management Division, Remedial Programs, Building B
4300 Cherry Creek Drive South
Denver, Colorado 80246

EPA has specifically asked NOT to be notified of such an occurrence.

Mr. Paul Rosasco
August 19, 2004
Page 2

3. A final report reflecting the breach or potential breach of the site cap/cover system and its respective repair, restoration, modification or construction shall be submitted to CDPHE and EPA within 30 calendar days after completion of the work and disposal of generated wastes.

Send final reports to the following:

Mark Rudolph, Denver Radium Site Project Manager
Colorado Department of Public Health and Environment
Hazardous Materials and Waste Management Division, Remedial Programs, Building B
4300 Cherry Creek Drive South
Denver, Colorado 80246

Rebecca Thomas
United States Environmental Protection Agency
U.S. Environmental Protection Agency, Region VIII
999 18th Street, Suite 500
Denver, CO 80202

This approval with modifications is effective the date of this letter. If you have any questions, please feel free to contact me at (303) 692-3311.

Sincerely,



Mark Rudolph
Denver Radium Site Project Manager
Hazardous Materials and Waste Management Division

Cc:	Robert Eber, Esq.	AGO office, State of Colorado
	Rebecca Thomas	US EPA
	Mr. Kemper Wall, Esq.	Burns, Figa & Will P.C.
	Site File	Denver Radium, OU2, 10.1 Operation and Maintenance Plan